

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
Wes and Jaci Vande Krol Lynnville, Iowa	NO. 2008-AQ- 49 NO. 2008-SW- 37

TO: Wes and Jaci Vande Krol
703 East Street; P.O. Box 265
Lynnville, Iowa 50153

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Wes and Jaci Vande Krol for the purpose of resolving the air quality and solid waste disposal violations which occurred during the burning of a house in Lynnville, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bill Gross, Field Office #5
Iowa Department of Natural Resources
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309-4611
Phone: 515/725-0271

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code

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(IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Wes and Jaci Vande Krol owned a house located at 706 East Street in Lynnville, Iowa. The house was a one and a half story century old home.
2. On July 10, 2008, Bill Gross, DNR Field Office 5 environmental specialist senior, met with Kelly Bryan, mayor of Lynnville. Mr. Gross and Mr. Bryan looked at old buildings in Lynnville and discussed proper disposal methods. One of the sites they looked at was Mr. and Mrs. Vande Krol's house. The house had been demolished and was in a pile in the foundation. Mr. Gross told Mr. Bryan that the demolished house could not be burned and must be disposed of at the landfill.
3. On July 18, 2008, DNR Field Office 5 received a complaint stating that Mr. and Mrs. Vande Krol had burned the demolished house.
4. On July 22, 2008, Mr. Gross contacted Mr. Bryan who stated that the city did not have anything to do with the burning and that he had informed Mr. Vande Krol that the demolished house could not be burned. Mr. Gross visited the site and found debris still burning. In addition to the house debris, Mr. Gross noted railroad ties in the burn pile. Mrs. Vande Krol was at the site at the time of Mr. Gross's visit and was instructed to extinguish the fire. Mr. Gross provided Mrs. Vande Krol with a copy of the open burning and solid waste disposal regulations. Mrs. Vande Krol stated that the city had told them that they could not burn the house debris.
5. On July 23, 2008, a Notice of Violation letter was issued to Mr. and Mrs. Vande Krol for the open burning and solid waste disposal violations observed on July 22, 2008. The letter required that Mr. and Mrs. Vande Krol take the remaining debris to the Newton landfill and send the landfill receipts to DNR Field Office 5 by August 30, 2008. The letter informed Mr. and Mrs. Vande Krol that the violations were being referred for further enforcement.
6. On August 29, 2008, Mr. and Mrs. Vande Krol submitted a letter to DNR Field Office 5 stating that a contractor had removed all of the debris. The landfill receipts were not included with the letter.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

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2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. and Mrs. Vande Krol burned their demolished house. In addition, Field Office 5 observed that other solid waste was being burned with the house debris. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Mr. and Mrs. Vande Krol improperly disposed of the house debris by burning it, rather than disposing of it at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Mr. and Mrs. Vande Krol agree to do the following:

1. Mr. and Mrs. Vande Krol shall submit receipts of all the landfill tickets to DNR Field Office 5 immediately; and
2. Mr. and Mrs. Vande Krol shall pay a penalty of \$1,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$1,500.00 penalty. Mr. and Mrs. Vande Krol are jointly and severally liable for the penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

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Economic Benefit - Failure to follow the proper solid waste disposal regulations by the improper open burning and disposal of the house has allowed Mr. and Mrs. Vande Krol to save time and money. Based on the above considerations, \$400.00 is assessed for this factor

Gravity of the Violation Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning, and solid waste regulations is required of all persons in this state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. \$450.00 is assessed for this factor.

Culpability Mr. and Mrs. Vande Krol have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. The mayor of Lynnville informed Mr. and Mrs. Vande Krol that they could not burn the demolished house; yet they chose to burn the house. Based on the above considerations, \$650.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. and Mrs. Vande Krol. For that reason, Mr. and Mrs. Vande Krol waive the rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

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RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 22 day of
Oct., 2008.



WES VANDE KROL

Dated this 15 day of
September, 2008.



JACI VANDE KROL

Dated this 15 day of
Sept., 2008.

Barb Stock (Con 10-6 Jasper County); Kelli Book; Field Office 5; VI.C and VII.C.1